



October 25, 2022

On June 22, 2022, the United States Senate Committee on Environment and Public Works held a hearing entitled, “Toxic Substances Control Act Amendments Implementation” <https://www.epw.senate.gov/public/index.cfm/2022/6/toxic-substances-control-act-amendments-implementation>. During the hearing, Senator Shelley Moore Capito asked about the two definitions of per- and polyfluoroalkyl substances (“PFAS”) that the U.S. Environmental Protection Agency (“EPA”) is using and whether a clear and consistent definition would be useful (timestamp: 54:20). Assistant Administrator Dr. Michal Freedhoff responded that the Office of Chemical Safety and Pollution Prevention (“OCSPP”) prepared a definition in 2006 for purposes of the Toxic Substances Control Act (“TSCA”) New Chemicals Program and proposed using that definition in rulemaking.

Requests

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (“PEER”) requests certain information from EPA regarding the definition of PFAS prepared by OCSPP in 2006. Specifically, we request:

1. All records and communications regarding OCSPP’s development of a PFAS definition in 2006, as referenced by Dr. Freedhoff, between January 1, 2001 – January 1, 2007, including, but not limited to, notes, emails, data, analyses, reports, memos, and letters.
2. All records and communications from any person, including anyone outside of EPA such as manufacturers, processors, distributors in commerce of chemicals or their technical representatives, and/or contractors, in EPA’s possession concerning the development of this definition of PFAS between January 1, 2001 – January 1, 2007.
3. Specifically, we are looking for documents that identify the names of persons, including EPA employees, manufacturers, processors, distributors in commerce of chemicals or their technical representatives, and contractors, involved with the development of OCSPP’s development of a PFAS definition.

Form of Records

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”).



This request includes all final documents that have ever been within the agency's custody or control, whether they exist in agency "working," investigative, retired, electronic mail, or other files currently or at any other time. All electronic records should be delivered in their original file format with metadata and any attachments included. Physical records should be scanned or otherwise converted into electronic format.

PEER specifically requests that a search be conducted of the agency's SharePoint, Google Drive, DropBox, or any similar system of file storage and management, as well as files stored locally on any relevant custodian's hard drive or cloud-computing OneDrive system. PEER also requests that a search be conducted in archived files for records that may have been in the possession of now-retired staff.

Custodians

Although some of these potential custodians may not have been working at EPA during the timeframe of interest, they may have access to this information and some may have been directly involved. Custodians likely to be in possession of responsive records include:

1. Michal Freedhoff – Assistant Administrator, OCSPP, EPA
2. Tala Henry
3. Kathy Schcecter
4. Tracy Williamson
5. Grace Patlewicz
6. Todd Stedeford
7. Anna Lowit
8. Jeff Morris
9. Wendy Cleland-Hamnett
10. Nancy Beck
11. Mark Strynar
12. Antony Williams
13. Ann Richards
14. Andy Lindstrom
15. All authors of this April 2022 article regarding EPA's development of a PFAS definition: <https://pubmed.ncbi.nlm.nih.gov/35936994/>

If after conferring with the named custodians it is likely that the requested records are held elsewhere please advise us as soon as convenient so that the scope of the request may be narrowed or altered. Custodians may also include environmental specialists, and scientific experts who would be expected to contribute to scientific analyses and definitions used in agency rulemaking as part of their normal job duties but whose identities are unknown. While the definition in question appears to have been developed



for OCSPP, this request is not limited to staff of that office if there are any records held by other custodians that are relevant to the requests above.

Withholdings and Exemptions

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

Fee Waiver Request

PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The records concern the operations or activities of the Government.

The FOIA request is, by its terms, limited to identifiable activities of the agency and its development of an agency definition of a class of chemicals.

2. The disclosure of the requested records is likely to contribute to public understanding of these operations or activities.

If the public sees these materials, it will help enhance their understanding of how the agency develops its understanding and policy response to PFAS. The regulation of PFAS is of great interest to the general public and environmental advocates, further official information from the agency will help clarify its role and process in understanding PFAS.

3. The release of these requested records will contribute significantly to public understanding of the governmental activities.

The nature of the information should enhance public understanding of the agency’s development of its PFAS regulations and policy over the course of decades.

PEER intends to disseminate this information on the agency’s working definition to the general public though –

- Release to the news media;
- Posting on the PEER web page which draws 5,000-7,000 unique visitors per month; and



- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 journalists.

Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, media coverage of PFAS underlines the broad public interest in this material.

4. Disclosure would not serve a commercial interest of the requestor.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue code.

If in the process of conducting a search for records responsive to this request it appears that a large quantity of irrelevant material is being included or further relevant material may not be captured by the specific terms of the request, or any other concerns related to the timeliness or completeness of the response arise, please contact the undersigned.

If you have any questions about this FOIA request, please contact me at 202-464-2293 or cteubner@peer.org. I look forward to receiving the agency's final response within 20 working days.

Sincerely,

Colleen E. Teubner
Litigation and Policy Attorney
Public Employees for Environmental Responsibility (PEER)
962 Wayne Ave, Suite 610
Silver Spring, MD 20910
202-464-2293
cteubner@peer.org
www.peer.org